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EXAMINER

CHAVIS, JOHN Q

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20

Application Number: 09/407,531
Filing Date: September 28, 1999
Appellant(s): NEWMAN, ALAN ET AL.

CHRISTIAN A. NICHOLAS

For Appellant

MAILED

JUL 14 2004

Technology Center 2100

EXAMINER'S ANSWER

This is in response to the appeal brief filed FEBRUARY 17, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-3, 8, 9, 14-15 and 19-31 does not stand or fall together because appellant's brief includes a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,223,343

Hopwood et al.

4-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Please find an entire copy of the final action below.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-3, 8-9, 14-15 and 19-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Hopwood et al. (6,223,343).

Claims

1. (Amended) A release control method for providing early deployment releases of a software system, the early deployment releases containing support for new features and platforms, the method comprising the steps of:

Hopwood

See the title, abstract, col. 14 lines 30-41, which indicates that support is provided for different systems and to manage and update configuration (new features and platforms) information, col. 15 lines 4-13. Also, see col. 2 lines 6-8,

a. providing a an early development branch of the software system that is designated for incorporation of one or more software modules providing support for new features and platforms;

b. receiving, from a plurality of integration units, a plurality of pre-tested software modules, wherein each of the pre-tested software modules comprises one or more new features or supports one or more new platforms;

c. committing the pre-tested software modules for new features and platforms into the early development branch; and

d. using the early development branch, generating a new early development release containing pre-tested software modules for new features and platforms.

2. (Amended) The release control method of claim 1 comprising the additional step of repeating steps c and d on a regular recurring basis for a fixed number of cycles.

3. (Amended) The release control method of claim 1 wherein the pre-tested software module is received at a pre-integration branch that is separate from the early development branch, and wherein the committing step comprises committing pre-tested software modules for new features and platforms from a pre-integration branch into the early development branch.

which further indicates that new features (creating...) and platforms (operating systems...) are supported via new releases. and that the features are tested.

See the developer branch (items 90,96, and 104) in fig. 6, col. 6 lines 29-32 and col. 2 lines 9-10, which indicates that new features are tested. See also col. 20 lines 25-33.

See the BLDISS branch, col. 2 lines 9-25, col. 3 lines 28-40, col. 8 lines 40-46, which provides support for the pre-tested features.

See the issuance processor in col. 3 lines 60-67.

Hopwood's Issuance Control Member generates an early development release, via col. 8 lines 40-46.

In reference to the repeated fixed scheduling, see col. 17 lines 13-37 and col. 3 lines 33-41.

As per the pre-integration branch, see the sub repository in col. 15 lines 42-65 and lines 10-26, which indicates that RMS is used to store, retrieve and distribute changes. The distribution functions indicate that the stored files are selected and pre-tested from earlier implementations.

Claims 8-9 and 23 are rejected as merely the system and computer readable medium versions of claims 1 and 3 above. Therefore, see figs. 6 and 7.

In reference to claims 14-15, 19-22, 24-31, see the rejection of claims 2 and 3, supra. Furthermore, in view of the testing prior to pre-integration, see the support platform in col. 2 lines 3-13, which evaluates (selects, tests and releases based on test results) the new programs use for the entire system, prior to development. Note the purpose of all of the testing above is inherently utilized to enable a release and commitment decision.

(11) Response to Arguments

The features specifically mentioned in the previous action are indicated above in the copy of the final action provided. Therefore, specific reference to those features should be acquired from the copy of the final action above.

In reference to Group 1, the applicant speaks of providing an early development branch, for incorporation of one or more software modules providing support for new features and platforms. He further indicates that Hopwood does not provide for the features. However, the examiner asserts that the build issuance (BLDISS, see item 32 of fig. 7) component (branch enabled or designated for incorporating software modules – see col. 3 lines 62-64 and col. 2 lines 4-13, which indicates that support platform 26 loads new programs and operating

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systems for the entire system and that developer platform 30 distributes the developed and tested programs/elements to the necessary components of the system (inherently, specifically designated for the entire system)) that provides for the feature by enabling new programs (new features) and new operating systems (new platforms) to be loaded, see col. 2 lines 3-8. The system receives pre-tested software modules from the developer workstation or host developer analyst (col. 2 lines 9-23). The new programs (new features) and (new operating systems) are the modules that are changed via the fact that their usage is evaluated (tested) for the entire computer system, see col. 2 lines 6-8. Note again, the newly developed and tested modules above are implemented via the developer branch, which includes the BLDISS component and implements new features via a separate branch (for the entire system). Each newly developed and tested program program/element (module) is then distributed to the necessary components (modules) of the system, col. 2 lines 9-13. Furthermore, indications that the program/element (MODULE) is the item that is changed is indicated by the definition of element and element inventory management in col. 25 lines 33-43 and lines 54-59. Furthermore, the changes (new features) are provided via multiple platforms (i.e. new platforms from the original platform and therefore support new platform and features), col. 27 lines 48-50. Hopwood's system further provides for merging the concurrently (i.e. including via multiple platforms) generated changes, see claim 49 in col. 34.

The applicant further argues that Hopwood's RMS system does not provide support for new platforms. However, in col. 11 lines 1-12, Hopwood allows for the creation of a copy of an element (one new feature) at any point in its development history and allow the management of changes made to files (more new features) on several platforms (one or more platforms, which in it's broadest reasonable interpretation means one). Now the key here is determining if this refer to only existing platforms or does it also include new platforms. The question is answered in col. 12 lines 65-col. 13 line 4, which indicates that changes are tracked and controlled throughout the development life cycle regardless of the strategic platform the element was development was developed on and regardless (i.e. new or old platforms) of the strategic platform the element is to be installed on. Furthermore, a new operating system is also considered to provide a new platform, see again the reference above.

Claims 2 and 8 are rejected as indicated in view of the final action recited again above in view of the remarks above.

As per GROUP 2 (claims 3, 9, and 19-31), see for example in fig. 6 how sub-repository data (pre-tested software) is received at the developer branch (pre-integration branch that is separate from the early development branch. Also, the sub-repository can also serve this purpose; since, the software it receives

from the archive or repository is pre-tested) before being received at the RMS (early development branch). Note again that the data in the sub-repository is not merely meta data as suggested by the applicant; since, copies (of pre-tested software) can be created at any point in its development history, col. 11 lines 1-12.

Therefore, according to col. 15 lines 14-26 and lines 42-52 (which indicates application and meta data is in the repository, not just meta data) and the cited portion above, the repository are not merely meta data, as specified by the applicant. Again, the repository provides for the archive (pre-tested data), element specific information, see col. 15 line 42-52.

In reference to GROUP 3 (claims 14-15), the applicant recites selecting a quantity of features that will allow a next schedule release to be completed at a required time is considered idealistic; since, there is not specific time frame noted anywhere by the examiner that will guarantee that a single selection will be completed and error free in a specified time or that 2 or more selections can be completed in another specified time. Therefore, Hopwood's release decisions are considered to provide for a realistic issue that provides for the feature of . The applicant further argues that Hopwood fails to disclose the selection of features, which at the time of selection may be completely untested, based on a scheduled release date. However, it is not clear which portion of the claims this refers to. The claims recite testing in a

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plurality of business units and completing testing; but, it is not clear which portion indicates that the selection is completely untested. Furthermore, col. 2 lines 9-10 indicate that testing is provided in the developer unit (one unit), col. 33-41 indicates that testing is provided via the BLDISS unit (**plurality of units**) and also supports the time frame feature. The BLDDOC unit also provides for testing, via col. 9 lines 10-14 and testing is also done on the host via col. 18 lines 7-15. Furthermore, the elements are chosen (selected), col. 19 lines 29-32 and the abstract.

(12) CONCLUSION

Therefore, since all features of the applicant's claims are taught and specified by Hopwood, as indicated above, the rejection of claims 1-3, 8-9, 14-15, and 19-31 should be sustained.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,




Jqc
July 9, 2004

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